106. We ask parties to comment on the impact on consumers of replacing access charges with additional subscriber charges and/or universal service support. To the extent reduced access charges lead to reduced retail rates for interexchange services, what would be the net impact on consumers? Would it be necessary for the Commission to require IXCs to pass through reductions in access charges? Or is such an approach unnecessary given the competitive state of the interexchange market? How, if at all, does the growing prevalence of bundled "all distance" offerings affect the ultimate costs and benefits for end-user customers of a proposal to eliminate interstate access charges? Should we be concerned if high-volume users reap most of the benefits of such a proposal? Should additional funding for Lifeline service be made available to offset the impact of such a proposal on low-volume, low-income consumers?

b. Rate-of-Return LECs

107. As compared to price cap LECs, rate-of-return LECs derive a much greater share of their revenue from access charges. According to NTCA, rural LECs receive on average, 10 percent of their revenue from interstate access charges and 16 percent from intrastate access charges.[321] In comparison, it asserts that the BOCs receive only four percent of their revenue from interstate access charges and six percent from intrastate access charges.[322]

108. Because many rate-of-return LECs depend so heavily on access charge revenue, some of the proposals submitted in this proceeding include special provisions for these carriers. For example, under the ICF proposal, the TNRM support mechanism for rate-of-return CRTCs is based on a revenue requirement rather than on line count.[323] We seek comment on the extent to which the Commission should give rate-of-return LECs the opportunity to offset lost access charge revenues with additional universal service funding, additional subscriber charges, or some combination of the two. If we eliminate SLC caps for price cap LECs, should we do the same for rate-of-return LECs? Or is such an approach not yet justified given the more limited competition that exists in most rural areas? If we authorize additional federal subscriber charges, should such charges be subject to the same caps, if any, that apply to price cap LECs?[324] Should we also adopt some sort of benchmark for local retail rates within the state jurisdiction, as proposed by ARIC?[325] We encourage parties to make specific proposals as to how any additional end-user charges should be calculated.

109. To the extent the Commission decides that additional universal service support also is necessary, we seek comment on how much additional support we must provide and how such support

[321]Letter from Scott Reiter, National Telecommunications Cooperative Association (NTCA), to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 7 (filed Jan. 7, 2004) (NTCA Jan. 7 *Ex Parte* Letter). Fred Williamson states that rural LECs in Kansas receive 37 percent of their revenue from interstate access charges and 12 percent from intrastate access charges, while rural LECs in Oklahoma receive 28 percent of their revenue from interstate access charges and 42 percent from intrastate access charges. *See* Letter from Tom Karalis, Fred Williamson & Associates, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, RM-10822, CC Docket Nos. 96-45 and 02-361, at Tab 2 (filed Jan. 7, 2004) (opposing the Western Wireless Petition on Elimination of Rate-of-Return Regulation of Incumbent LECs).

[322]NTCA Jan. 7 *Ex Parte* Letter at 8.

[323]*See* ICF Proposal at 54, 73.

[324]*See supra* paras. 101-02.

[325]*See* ARIC Proposal at 61-62.

should be distributed. Should rate-of-return carriers be required to demonstrate that they are unable to recover their interstate-allocated costs from other sources before we authorize any additional universal service funding? Or should the Commission adopt a support mechanism that fixes or caps the amount of support at a level estimated by the Commission as necessary to achieve its goals?

110. If we conclude that additional universal service funding is necessary, one possible approach would be to provide such funding through the ICLS mechanism. Under such a methodology, ICLS would be expanded to include not just common line costs, but also switching and transport costs. Alternatively, the Commission could create a new interstate access support mechanism. With respect to any proposed support methodologies, commenters should provide a detailed explanation as to how support should be calculated and the administrative burdens involved. In particular, parties should address the amounts of universal service funding that would be required under the various proposals described above. NTCA stated that $884 million would be needed to offset lost interstate access revenues if the Commission adopts a bill-and-keep regime.[326] EPG states that there will be a $900 million revenue shortfall under its plan, although this appears to be entirely associated with intrastate rate reductions.[327] Interstate revenues would remain the same under the EPG plan, but would be recovered through flat-rated charges, rather than per-minute charges for some rate elements.[328] We seek comment on the accuracy of these estimates and the validity of the underlying assumptions. Commenters should also address the competitive neutrality of any new proposed universal service mechanisms with respect to competitive eligible telecommunications carriers.

111. We ask parties to comment on the impact on rural consumers of replacing access charges with additional universal service support and/or subscriber charges. NTCA states that currently rural consumers tend to make more interexchange calls than urban customers (because there are fewer customers in their local calling areas) and that IXCs do not always offer their lowest priced calling plans in rural areas.[329] Substantially reducing the access charges imposed on IXCs has the potential to resolve both these issues in a manner that benefits rural consumers. If interexchange rates decline with reductions in access charges, as we would expect in a competitive marketplace, rural customers could benefit even more than urban customers from a transition to a regime with substantially lower intercarrier payments. In addition, reductions in access charges would eliminate barriers to IXCs entering rural markets and offering their lowest priced calling plans. Furthermore, to the extent access charge revenues decline, and long-distance prices decline, are LECs more likely to offer long distance services in lieu of providing only access services? We seek comment on whether and to what extent the benefits of reduced access charges would offset the burden associated with any additional subscriber charges that might be imposed.

112. With respect to rate-of-return LECs in particular, we recognize that an approach that retains some intercarrier payments from IXCs for switched access services may be appropriate. The CBICC, ARIC, EPG, and Home/PBT proposals call for unified termination rates based on different cost

[326]NTCA Jan. 7 *Ex Parte* Letter at slide 61.

[327]*See* Letter from Glenn H. Brown, Expanded Portland Group, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attach. at 15 (filed May 12, 2004) (EPG May 12 *Ex Parte* Presentation).

[328]EPG Proposal at 31-32.

[329]NTCA March 2004 White Paper at 16-21.

methodologies or on existing rates, that will remain in effect indefinitely.[330] Similarly, NASUCA proposes a interim regime based on target rates to be established by the Commission.[331] The ICF proposes a specific, declining termination rate, although even this plan includes some rates that would remain indefinitely.[332] Western Wireless proposes to eliminate per-minute compensation rates using targeted reductions over a four-year period, with a longer transition period for small rural incumbent LECs.[333] In addition to these proposals, parties should comment on whether the $0.0095 rate adopted in the *CALLS Order* might be an appropriate rate, either as a transitional rate or as an end point. Parties suggesting a different rate should explain why that rate would be more appropriate. Parties suggesting that multiple rates should be adopted should specify the rates to be used and the parameters that would determine the rates a carrier could charge.

113. If we were to adopt a target rate proposal, such as that proposed by NASUCA, either as a transition or for an indefinite duration, parties should address whether there is a need to establish rules governing how that rate should be distributed among the different access categories or rate elements and, if so, what those rules should be. In this connection, commenters should pay particular attention to the potential that, in the absence of such rules, rate-of-return LECs could target reductions to areas they perceived to be subject to the most competitive risk. Parties should also address whether the definition of average traffic sensitive rates in section 61.3(e) should apply to rate-of-return LECs, or whether conditions unique to rate-of-return LECs require development of a different definition.[334]

2. Intrastate Access Charges

114. If the Commission acts to reduce or eliminate intrastate switched access charges, it may be necessary to give price cap and rate-of-return LECs the opportunity to offset those revenue losses with alternative cost recovery mechanisms. As with interstate access charges, the two primary mechanisms for doing this are increased subscriber charges and increased universal service funding. We ask parties to comment on how these mechanisms should be structured to give LECs the opportunity to offset lost intrastate access charge revenue. In sections II.F.1.a and II.F.1.b above, we solicit comment on a number of important questions related to replacing interstate switched access charges with additional universal service funding and subscriber charges. We ask parties to address these same questions as they relate to intrastate access charges.

115. If the states reduce access charges as part of a comprehensive reform effort adopted by the Commission, issues may arise as to whether the Commission or the state is responsible for establishing an alternative revenue source. Under the ARIC proposal, for example, additional universal service support would come from both federal and state sources, but it would be distributed by the

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[330] *See* ARIC Proposal at 37 (proposing rates based on embedded costs); CBICC Proposal at 1 (proposing TELRIC-based rates); EPG Proposal at 21 (proposing rates based on interstate access levels); Home/PBT Proposal at 14 (proposing connection-based intercarrier charges capped at the national average retail fee for a standard business line).

[331] NASUCA Proposal at 1.

[332] ICF Proposal at 36-38.

[333] Western Wireless Proposal at 13.

[334] 47 C.F.R. § 61.3(e).

states.[335] We seek comment on whether the Commission should create a federal mechanism to offset any lost intrastate revenues, or whether the states should be responsible for establishing alternative cost recovery mechanisms for LECs within the intrastate jurisdiction. We ask parties to provide specific proposals that identify the amount of revenue at issue, how such calculations were made, and the specific means by which recovery should be made available. In the event that the Commission thinks that a federal mechanism should be created to offset intrastate access charge revenue reductions, should the Commission refer to the Federal-State Joint Board on Universal Service issues related to the establishment and design of that mechanism?

G. Implementation Issues

116. Under our access charge regime, the rates, terms and conditions under which carriers provide interstate access services are generally contained in tariffs filed with this Commission.[336] In contrast, the exchange of traffic under section 251(b)(5) is governed by interconnection agreements.[337] We seek comment on how to reconcile these two approaches if we move to a unified rate for all types of traffic. Is a regime based solely on agreements feasible if the Commission retains intercarrier payments for origination and termination of traffic? What would be the default compensation rule if parties exchanged traffic in the absence of some type of interconnection agreement? While price cap LECs have ample experience with the negotiation and arbitration of such agreements, the same is not true for all rate-of-return LECs because new entrants have been slower to enter their service areas. In addition, many rate-of-return LECs may be exempt from some of the requirements of section 251 by virtue of the rural exemption in section 251(f).[338] We ask parties to identify any unique obstacles that may arise for rate-of-return LECs in connection with a regime based solely on agreements and to propose solutions to overcome those obstacles. For example, is it possible to develop something comparable to the pooling process that takes place for carriers that participate in the NECA tariff? If not, are there other mechanisms available to rate-of-return LECs to guard against the risks pooling is designed to reduce? We also ask parties to discuss how regulation of intercarrier payments for interexchange traffic would operate with respect to LECs that have received a suspension or modification of the requirements of section 251(b) pursuant to section 251(f)(2).

117. Many of the proposals submitted in this record include some sort of transition period to give carriers sufficient time to make necessary changes in their business operations. Given the substantial changes that are possible in this rulemaking, we seek comment on what type of transition would be needed for a new regime. What type of transition would be needed if we reduced, but did not eliminate, interstate switched access charges? Should one component of any such transition be conversion of per-minute charges to flat-rated charges that better reflect the manner in which switching costs are incurred? Parties should be specific in proposing time frames and milestones that would be part of any transition to a new access charge regime. Further, if the Commission has legal authority to reduce or eliminate intrastate access charges, should intrastate access charges be reduced or eliminated on the

[335] *See* ARIC Proposal at 76-80.

[336] 47 U.S.C. § 203. Competitive LECs are permitted, at their option, to file tariffs for interstate access services at rates at or below a prescribed benchmark. They are subject to mandatory detariffing with respect to rates above that benchmark. *See CLEC Access Charge Recon. Order*, 18 FCC Rcd at 9110-11, para. 4.

[337] 47 U.S.C. §§ 251, 252.

[338] 47 U.S.C. § 251(f).

same schedule as interstate access charges, or would it be better to give states more flexibility in light of the role they historically have played in addressing these issues?

118. Parties also should address whether there are any adverse consequences associated with transitioning rate-of-return LECs toward a new unified regime at a slower pace than price cap LECs. For example, are there arbitrage issues associated with maintaining a rate differential between rural and non-rural LECs? Does such an approach place nationwide long distance carriers at a competitive disadvantage relative to IXCs that focus on lower cost areas (*e.g.*, the BOCs)?

119. Some rate-of-return LECs state that they are not authorized to provide interexchange services.[339] If the Commission moves to reduce, and possibly eliminate, the imposition of access charges by rate-of-return LECs, is there any reason for states to prohibit them from providing toll services? Would preemption of any such prohibitions be appropriate under section 253 of the Act, which generally prohibits state and local governments from preventing any carrier from providing any intrastate or interstate telecommunications service?[340] Parties should discuss the benefits that might accrue to rural customers if all rate-of-return LECs were permitted to provide interexchange services.

H. Additional Issues

1. Transit Service Issues

a. Background

120. Transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier's network.[341] Typically, the intermediary carrier is an incumbent LEC and the transited traffic is routed from the originating carrier through the incumbent LEC's tandem switch to the terminating carrier. The intermediary (transiting) carrier then charges a fee for use of its facilities. Although many incumbent LECs, mostly BOCs, currently provide transit service pursuant to interconnection agreements,[342] the Commission has not had occasion to determine whether carriers have a duty to provide transit service. The reciprocal compensation provisions of the Act address the exchange of traffic between an originating carrier and a terminating carrier, but the Commission's reciprocal compensation rules do not directly address the

[339] *See, e.g.*, Letter from Sylvia Lesse, Counsel to the Missouri Companies, to William F. Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-92, at 6 (filed Mar. 22, 2003); Letter from Glenn H. Brown, Great Plains Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 8 (filed Sept. 23, 2003); Letter from W.R. England, III, Counsel to the Missouri Small Rural Incumbent Local Exchange Companies, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 3 (filed Oct. 31, 2003).

[340] 47 U.S.C. § 253.

[341] The exchange of access traffic, including the joint provision of access by two or more carriers, is governed by federal and state access charge rules.

[342] Indeed, the record suggests that most BOCs currently offer transit service to competitive LECs and CMRS providers pursuant to agreements. *See, e.g.*, Verizon Reply at 26-27.

intercarrier compensation to be paid to the transit service provider.[343]

121. In the *Intercarrier Compensation NPRM*, the Commission sought comment on issues that arise under the current intercarrier compensation rules when calls involve a transit service provider, and how a bill-and-keep regime might affect such calls.[344] Specifically, the Commission sought comment on the transport obligations of interconnected LECs and whether it should allow LECs to charge each other for delivering transit traffic that originates on the networks of other carriers.[345] The Commission recognized that CMRS carriers also originate and terminate section 251(b)(5) traffic that transits incumbent LEC networks, and requested comment on the issues or problems that the current rules present for these calls.[346] In this section, we solicit further comment on whether there is a statutory obligation to provide transit services under the Act, and, if so, what rules the Commission should adopt to advance the goals of the Act.

122. Incumbent LECs argue that they are not required to provide transit service under the Act and that transit service offerings should remain voluntary.[347] They explain that they limit the availability of such services in order to prevent traffic congestion and tandem exhaust, and to encourage carriers to establish direct interconnection when traffic volumes warrant it.[348] According to these commenters,

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[343] *See* 47 U.S.C. § 252(d)(2)(A)(i) (requiring that the terms and conditions for reciprocal compensation provide for the "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier").

[344] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9634, para. 71. In a related proceeding, Qwest had argued that a bill-and-keep arrangement does not work when three carriers are involved in the transport and termination of traffic because the carrier providing the transit service does not have a customer involved in the call from which it can recover costs. *Id.* (citing Letter from Lynn R. Charytan, Counsel for Qwest Communications International, Inc. to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket Nos. 96-98 and 99-68, App. B, at ii (filed Nov. 22, 2000)). *See also* Qwest Reply at 25 n.14 (clarifying that its concern applied only to the situation where the intermediary carrier has no relationship with the end-user, and, therefore, cannot recover its costs from the end-user).

[345] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9634, para. 71.

[346] *See id.*

[347] *See* MITG Reply at 9-10; SBC Reply at 19; Verizon Reply at 25-26. *See also* Letter from Glenn Reynolds, Vice President, Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 at 6 (filed Aug. 29, 2003) (BellSouth Aug. 29 *Ex Parte* Letter); Letter from Glenn Reynolds, Vice President, Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed May 16, 2003) (attaching Letter from Glenn Reynolds, Vice President, Federal Regulatory, BellSouth Corporation, to William Maher, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 01-92 at 3 (filed May 15, 2003) (BellSouth May 16 *Ex Parte* Letter); Letter from Joseph Mulieri, Executive Director – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 at 2-6 (filed June 13, 2003) (Verizon June 13 *Ex Parte* Letter); Letter from Joseph Mulieri, Assistant Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 2-4 (filed Sept. 4, 2003) (Verizon Sept. 4 *Ex Parte* Letter).

[348] Verizon Reply at 26-27. *See also* Verizon June 13 *Ex Parte* Letter at 6; Verizon Sept. 4 *Ex Parte* Letter at 6. Moreover, the smaller incumbent LECs complain that the larger incumbent LECs, *i.e.*, the BOCs, have entered into transiting arrangements with other carriers, whereby the BOC delivers traffic destined for a rural LEC to that LEC for termination without authorization or any agreement among all the carriers involved. *See* Alliance of Incumbent (continued....)

transiting should be treated as an unregulated service offered at market-based prices, or, alternatively, as special access.[349]

123. Competitive LECs and CMRS providers argue that incumbent LECs are required to provide transit service under the Act,[350] and they urge the Commission to ensure continued access to transit service.[351] These carriers explain that indirect interconnection via a transit service provider is the most efficient means of interconnection and that the availability of transiting is critical to the development of competition.[352] CMRS providers in particular argue that the low volume of traffic exchanged with smaller LECs does not warrant direct interconnection and that transit service is necessary for indirect interconnection.[353] These commenters urge the Commission to set cost-based compensation for transit service using the Commission's forward-looking TELRIC cost methodology.[354]

124. In addition to these comments, several of the reform proposals include new rules addressing the regulation of transit services. For instance, the ICF proposal includes, as part of its network interconnection rules, a finding that tandem transit service is an interstate common carrier

(Continued from previous page)
Rural Telephone Companies and Independent Alliance Reply at 6-7. They further argue that such transiting arrangements preempt any opportunity for the small incumbent LEC to establish an agreement with the originating carrier and provide interconnection services. *See id.* at 7; MITG Reply at 9.

[349] *See* SBC Reply at 19 (advocating market-based rates); USTA Reply at 22 (arguing that transit service should be treated as an unregulated service or, in the alternative, treated as special access); Verizon Reply at 27 (advocating market-based rates); BellSouth Aug. 29 *Ex Parte* Letter at 11 (supporting market-based rates); Verizon Sept. 4 *Ex Parte* Letter at 2 (supporting market-based rates). *Cf.* MITG Reply at 11-15 (arguing that access charges must apply to transit service because three carriers are involved in the call rather than two).

[350] *See* Sprint Comments at 34 (relying on sections 251(a) and 251(c)(2)(B) of the Act); AT&T Reply at 48 (discussing sections 251(a) and 251(c)(2)(B) of the Act); VoiceStream Reply at 22 (citing section 251(a) of the Act). *See also* Letter from Laura H. Phillips, Counsel to Nextel Communications, Inc. and T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 at Attach. (filed May 16, 2003) (stating that sections 251(a)(1), 251(b)(5), 251(c) and 332(c) of the Act require incumbent LECs to provide transit service at cost-based rates) (Nextel/T-Mobile May 16 *Ex Parte* Letter).

[351] *See* Triton Comments at 13; Verizon Wireless Comments at 42-44; AT&T Reply at 48; Nextel Reply at 10; Sprint Reply at 16-18; Triton Reply at 8-9; Verizon Wireless Reply at 16; VoiceStream Reply at 22.

[352] *See* Sprint Comments at 33; Triton Comments at 13-14; AT&T Reply at 48; Nextel Reply at 10; Sprint Reply at 16-17; Triton Reply at 9; VoiceStream Reply at 22. In response to claims that transiting hinders the development of facilities-based competition, Sprint responds that duplicating incumbent LEC facilities would only impose unnecessary costs on new entrant carriers. *See* Sprint Reply at 17.

[353] *See* Triton Comments at 13-14 (arguing that transiting traffic is the only economically justifiable way for a CMRS provider to exchange traffic in rural areas); Verizon Wireless Comments at 43 (stating that transiting is the best way to ensure cost-effective service availability to rural customers); Nextel Reply at 10 (asking the Commission to ensure that indirect transit traffic arrangements remain a viable option because indirect interconnection is far more efficient in circumstances where a relatively small volume of traffic is exchanged); Triton Reply at 8-9 (urging the Commission to facilitate indirect interconnection through transiting arrangements); VoiceStream Reply at 22 (stating that CMRS carriers do not have the traffic volumes to justify direct connections).

[354] Sprint Comments at 35; Sprint Reply at 18; VoiceStream Reply at 25.

offering subject to regulation by the Commission.[355] Under this proposal, incumbent LECs already providing transit service would continue to offer the service for the entire term of the ICF plan.[356] The ICF plan also includes a clarification of carrier responsibilities in a transit service arrangement and specified rate caps for transit services, which vary depending on the stage of the ICF plan.[357] In contrast, under the CBICC proposal, transit service providers would charge TELRIC-based rates for the functions provided.[358] Under the Western Wireless proposal, incumbent LECs would be required to offer transit service at capped rates.[359]

b. Discussion

125. The record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act.[360] It is evident that competitive LECs, CMRS carriers, and rural LECs often rely upon transit service from the incumbent LECs to facilitate indirect interconnection with each other. Without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.

126. Moreover, it appears that indirect interconnection via a transit service provider is an efficient way to interconnect when carriers do not exchange significant amounts of traffic.[361] Competitive LECs and CMRS carriers claim that indirect interconnection via the incumbent LEC is an efficient form of interconnection where traffic levels do not justify establishing costly direct connections. As AT&T explains, "transiting lowers barriers to entry because two carriers avoid having to incur the costs of constructing the dedicated facilities necessary to link their networks directly."[362] This conclusion appears to be supported by the widespread use of transiting arrangements.

127. We seek comment on the Commission's legal authority to impose transiting obligations. For example, competitive LECs and CMRS carriers point to sections 251(a)(1) and 251(c)(2)(B) of the Act in support of transiting obligations.[363] AT&T and Sprint contend that the language in section 251(a)

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[355] *See* ICF Proposal at 25.

[356] *See id.* Further, a carrier seeking to discontinue offering tandem transit service would need to obtain section 214 authorization under the ICF plan. *Id.*

[357] *Id.* at 25-29. Moreover, the ICF proposal includes certain traffic volume limitations and other restrictions in situations of tandem congestion or exhaust. *Id.* at 30-31.

[358] *See* CBICC Proposal at 2.

[359] Western Wireless Proposal at 12.

[360] *See* 47 U.S.C § 251(a)(1).

[361] *See* Triton Comments at 13-14; AT&T Reply at 48; Nextel Reply at 10; Sprint Reply at 17; Triton Reply at 8-9; VoiceStream Reply at 22.

[362] AT&T Reply at 48.

[363] 47 U.S.C. § 251(a)(1) (requiring telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers"); 47 U.S.C. § 251(c)(2)(B) (requiring incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network").

regarding indirect interconnection requires carriers to provide transiting arrangements.[364] In addition, these carriers rely on the "at any technically feasible point" language in section 251(c)(2)(B) in support of transiting obligations.[365] They explain that interconnection at the tandem switch provides access to the full tandem switching functionality, including access to subtending end offices owned by carriers other than the tandem provider.[366] Furthermore, Sprint points to the language of section 251(c)(2)(a), requiring incumbent LECs to interconnect with requesting carriers for the "transmission and routing of telephone exchange service and exchange access," to support transiting obligations.[367]

128. Under section 251(a) of the Act, telecommunications carriers "should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices."[368] The Commission's rules define the term "interconnection" to mean "the linking of two networks for the mutual exchange of traffic" and not "the transport and termination of traffic."[369] We seek comment on whether that definition applies, or should apply, in the context of section 251(a).[370] In particular, we ask parties to comment on whether the statutory language regarding the duty to interconnect directly or indirectly under section 251(a) should be read to encompass an obligation to provide transit service. To whom would that implied obligation run?[371] Parties commenting on this issue should address the positions raised in the record and any other arguments concerning the Commission's legal authority to impose transiting obligations. For instance, we seek comment on whether a transiting obligation could also arise under section 251(b)(5)[372] or other sections of the Act, including section 201(a).[373] Parties should also identify and address other regulatory

[364]Sprint Comments at 34; AT&T Reply at 48. *See also* VoiceStream Reply at 22. For instance, Sprint states that 251(a)(1) becomes "meaningless" if the BOCs can ignore their transiting obligations. *See* Letter from Luisa L. Lancetti, Vice President, Regulatory Affairs, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 at 6 (filed Aug. 6, 2003) (Sprint Aug. 6 *Ex Parte* Letter). *But see* Verizon June 13 *Ex Parte* Letter at 2 (arguing that nothing in the Act requires Verizon to accept and transport traffic destined for a third party carrier).

[365]Sprint Comments at 34; AT&T Reply at 48.

[366]Sprint Comments at 34; AT&T Reply at 48.

[367]Sprint Aug. 6 *Ex Parte* Letter at 6 (citing 47 U.S.C. § 251(c)(2)(A)).

[368]*Local Competition First Report and Order*, 11 FCC Rcd at 15991, para. 997 (defining interconnection obligations under section 251(a)).

[369]47 C.F.R. § 51.5. *See also Local Competition First Report and Order*, 11FCC Rcd at 15590, para. 176 (interpreting section 251(c)(2) of the Act).

[370]47 U.S.C. § 251(a).

[371]For example, if two carriers choose to meet their obligation under section 251(a) by interconnecting directly, should each be obligated to pass traffic to other carriers through the direct connection?

[372]*See* 47 U.S.C. § 251(b)(5) (requiring that LECs establish reciprocal compensation arrangements for the transport and termination of telecommunications).

[373]*See* 47 U.S.C. § 201(a) (giving the Commission the authority to establish physical connections and through routes if it, after opportunity for hearing, finds such action necessary or desirable in the public interest).

implications of the Commission's conclusions on this issue.[374]

129. Assuming that the Commission has the necessary legal authority, we solicit comment on whether we should exercise that authority to require the provision of transit service. We recognize that many incumbent LECs, mostly BOCs, voluntarily provide transit service pursuant to interconnection agreements. These carriers argue that there is no need to adopt rules for transit service.[375] The record suggests, however, that some carriers may experience difficulty in obtaining transit service,[376] and the record is silent on whether transit service is currently available at reasonable rates, terms, and conditions. We acknowledge the concerns of competitors that the unavailability of transit service at reasonable rates, terms, and conditions could pose a barrier to entry, and we also recognize the importance of identifying and implementing appropriate interconnection incentives for the future. Thus, we seek additional comment on the extent to which providers (including non-incumbent LECs) make transit service available in the marketplace at reasonable rates, terms, and conditions, and the extent to which rules implementing transit service obligations are warranted at this time. In this regard, we seek comment on the possibility that mandated transiting or regulated rates for such service might discourage the development of this market. Conversely, we seek comment on whether any rules adopted should encourage the provision of transit service by carriers other than incumbent LECs and, if so, how.

130. If rules regarding transit service are warranted, we seek comment on the scope of such regulation. Specifically, we seek comment on whether transit service obligations under the Act should extend solely to incumbent LECs or to all transit service providers, including competitive LECs.[377] Parties advocating that any rules should apply exclusively to incumbent LEC transit service should address whether the regulation of some transit service providers but not others would create arbitrage risks or result in an unfair competitive advantage.

131. We also seek comment on the need for rules governing the terms and conditions for transit service offerings. In particular, we seek comment on whether limitations on transit service obligations should be considered and the legal authority for imposing such limitations if transit service rules are adopted. For instance, if a transit service obligation is imposed, indirectly interconnected carriers may lack the incentive to establish direct connections even if traffic levels warrant it.[378] As mentioned above, some incumbent LECs currently limit the availability of transit services in order to prevent traffic congestion and tandem exhaust, and to encourage carriers to establish direct

[374]For example, a determination that incumbent LECs have a transiting obligation pursuant to section 251(c)(2) would also trigger an obligation to provide such a service under section 271(c)(2)(B)(i).

[375]*See* Verizon Reply at 26 (stating that carriers will offer transit service where it is economical for them to do so). *See also* USTA Reply at 22 (stating that the better policy option is to permit all carriers the ability to offer transit service as an unregulated service).

[376]Sprint Comments at 33 (stating that some BOCs have refused, or announced their intention to refuse, to provide indirect interconnection or transiting). *See also* Triton Comments at 13 (describing difficulties experienced in trying to obtain transit arrangements).

[377]The source of legal authority affects the scope of the obligation. *See supra* para. 128 (seeking comment on which section of the Act provides legal authority for the imposition of transiting service obligations).

[378]*See* Verizon Reply at 27 (arguing that limitations are necessary to provide the incentive for direct connections between carriers).

interconnection when traffic volumes warrant it.[379] We ask parties to comment on whether similar limitations should apply to any transit service obligations, and under what conditions.

132. Further, if the Commission determines that rules governing transit service are warranted, we seek additional comment on the appropriate pricing methodology, if any, for transit service. The reciprocal compensation provisions of the Act address the exchange of traffic between two carriers, but do not explicitly address the intercarrier compensation to be paid to the transit service provider for carrying section 251(b)(5) traffic.[380] Similarly, section 251(a)(1) does not address pricing. Most commenters agree that incumbent LECs should be compensated for transit service, but they disagree as to the appropriate pricing methodology for this service.[381] Thus, we seek further comment on the appropriate pricing methodology, including the possibility of requiring that transit service be offered at the same rates, terms, and conditions as the incumbent LEC offers for equivalent exchange access services (*e.g.*, tandem switching and tandem switched transport) and how this option would be affected by our proposals to alter the current switched access regime.[382] Moreover, if transit service is treated as an access service, we seek comment on whether pricing flexibility could be obtained based on our existing rules, and seek input on the appropriate test to determine when pricing flexibility would be appropriate. Parties should provide evidence of the degree to which there is, or could be, competition for transit services and how the level of competition should be reflected in our choice of a pricing methodology. Further, we ask parties to comment on whether the efficient pricing of transit service would eliminate the need for any explicit limitations on transit obligations, *i.e.*, whether the correct price signals would encourage direct connections when necessary.

133. Finally, we recognize that the ability of the originating and terminating carriers to determine the appropriate amount and direction of payments depends, in part, on the billing records generated by the transit service provider. Thus, we ask carriers to comment on whether the current rules and industry standards create billing records sufficiently detailed to permit the originating and terminating carriers to determine the appropriate compensation due.[383] For instance, although current billing records include call detail information, it is unclear whether and to what extent these billing records include carrier identification information. We seek further comment on the extent to which billing information in a transiting situation may be inadequate to determine the appropriate intercarrier compensation due, and we ask carriers to identify possible solutions to the extent that billing problems

[379] *See, e.g.*, Verizon Reply at 26-27. Verizon, for instance, offers transit service and tandem switching of transit traffic up to a DS-1 capacity level and offers special access arrangements for traffic above a DS-1 level. *Id.* at 27.

[380] *See* 47 U.S.C. § 251(b)(5); 47 U.S.C. § 252(d)(2)(A)(i) (requiring that the terms and conditions for reciprocal compensation provide for the "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier").

[381] The Illinois Commission supports cost-based rates for transit service, but it does not advocate a specific pricing methodology. Illinois Commission Comments at 10. It supports market-based rates once "sufficient competition develops." *Id.* at 9.

[382] *See* MITG Reply at 11 (concluding that, if reciprocal compensation rates do not apply to this traffic, then access rates must apply).

[383] For example, VoiceStream complains that it does not always receive the information it needs to bill the originating carrier for traffic it terminates, and asks us to direct tandem switch owners to provide the identity of the carrier to be billed with each call. VoiceStream Reply at 26. VoiceStream claims that the SS7 signaling in use has never been modified to identify and convey in the trunk signaling messages the carrier to be billed. *Id.*

exist today.[384] Specifically, we request comment about whether to impose an obligation on the transiting carrier to provide information necessary to bill, including both the identity of the originating carrier, and the nature of the traffic.[385] Parties should explain whether this obligation to exchange information is necessary if we move to a bill-and-keep regime. In the absence of such information, it may be difficult for carriers exchanging traffic indirectly to identify each other and to determine the type and quantity of traffic that they exchange with each other. This may affect not only the exchange of compensation between the parties, but also may hinder the ability to establish direct connections. Parties should address whether such solutions are best implemented by this Commission, industry organizations, or some combination of the two.

2. CMRS Issues

a. The IntraMTA Rule

134. In the *Local Competition First Report and Order*, the Commission stated that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA)[386] is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges.[387] The Commission reasoned that, because wireless license territories are federally authorized and vary in size, the largest FCC-authorized wireless license territory, *i.e.*, the MTA, would be the most appropriate local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5).[388] Thus, section 51.701(b)(2) of the Commission's rules defines telecommunications traffic exchanged between a LEC and a CMRS provider that is subject to reciprocal compensation as traffic "that, at the beginning of the call, originates and terminates within the same Major Trading Area."[389]

135. The purpose of the intraMTA rule is thus to distinguish access traffic from section 251(b)(5) CMRS traffic. Given our goal of moving toward a more unified regime, we seek comment on whether the Commission should eliminate the intraMTA rule. We note that many of the proposals would eventually eliminate the intraMTA rule and treat CMRS traffic the same as all other wireline traffic for

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[384]In the VoIP context, for instance, Level 3 suggests using the Originating Line Information (OLI), also known as ANI II, SS7 call set-up parameter to identify IP-enabled services traffic. *See* Letter from John T. Nakahata, Counsel for Level 3, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 03-266 and 04-36, at 2-3 (filed Sept. 24, 2004). Moreover, the EPG proposal in this proceeding includes support for a "Truth-in-Labeling" policy. *See* EPG Proposal at 16-17.

[385]In certain situations, obligating the transiting carrier to pass on the billing information in its records may not be sufficient. For example, the transiting carrier may be aware of the identity of the originating carrier, based on the facilities over which it receives the traffic, and of the trunk group (local exchange service or exchange access) that carries the traffic, even though that information is not formally recorded in the billing record. Under the ARIC reform proposal, the tandem owner would be responsible for compensation payments in the case of unidentified traffic. *See* ARIC Proposal at 55.

[386]The definition of an MTA can be found in section 24.202(a) of the Commission's rules. 47 C.F.R. § 24.202(a).

[387]*Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036.

[388]*Id.*

[389]47 C.F.R. § 51.701(b)(2).

compensation purposes.[390] Parties that support maintaining the intraMTA rule or some modification of that rule should address why a CMRS-specific approach is necessary or desirable in light of our goal of adopting a more unified regime. Commenters should also discuss the impact of eliminating the intraMTA rule prior to the adoption of a new unified regime. Parties that advocate eliminating the intraMTA rule should discuss the effect such a change would have on existing compensation arrangements if we maintain separate reciprocal compensation and access charge regimes.

136. We further invite commenters to discuss how parties should determine which LEC-CMRS calls are subject to reciprocal compensation in the absence of the intraMTA rule. Are wireline local calling areas the appropriate geographic scope for both LEC-originated and CMRS-originated reciprocal compensation calls? Assuming so, how should the end-point of the mobile call be determined? In the *Local Competition First Report and Order*, the Commission suggested that the cell-site in use at the beginning of the call or the point of interconnection might be used as proxies for the location of the mobile caller.[391] Should these continue to be alternatives in the absence of the intraMTA rule? If not, what other methods exist for determining whether calls are subject to reciprocal compensation or access charges? Should these methods also be used to determine the appropriate intercarrier compensation for calls between two wireline carriers to ensure a unified regime? Can these methods be applied to transited traffic, such that terminating incumbent LECs will be able to distinguish reliably between terminated traffic subject to reciprocal compensation (for which they will charge the CMRS carriers) and access traffic (for which they would presumably charge the IXC)? We seek comment on these questions.

137. We also note that carriers have disagreed regarding the meaning of the existing intraMTA rule. Many rural LECs argue that intraMTA traffic between a rural LEC and a CMRS provider must be routed through an IXC and therefore is subject to access charges, rather than reciprocal compensation.[392] CMRS providers, however, argue that all CMRS traffic that originates and terminates

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[390] *See, e.g.*, ARIC Proposal at 35, 37 (describing a mechanism that would apply to all traffic traversing the network); CBICC Proposal at 3 (proposing a plan that eliminates concerns with respect to the intercarrier compensation for CMRS traffic); EPG Proposal at 21-22 (advocating a convergence of the disparate intercarrier rates); Home/PBT Proposal at 13 (supporting unified connection-based rates); ICF Proposal at 46-47 (proposing a default termination rate for CMRS traffic that eventually becomes the uniform rate on July 1, 2008); Western Wireless Proposal at 13 (supporting a four-year transition to bill-and-keep for all traffic).

[391] *Local Competition First Report and Order*, 11 FCC Rcd at 16017-18, para. 1044.

[392] *See* MECA Comments at 37. They explain that, because traffic is routed to and from wireless NXXs located outside of the rural LEC's local calling scope, it is toll traffic routed via an IXC, and traffic routed to or from an IXC is subject to access charges rather than reciprocal compensation. *See, e.g.*, Letter from Sylvia Lesse, Counsel to the Missouri Companies, to William F. Caton, Acting Secretary, Federal Communications Commission, WT Docket No. 01-316 and CC Docket No. 01-92, Attach. at 6 (filed Mar. 22, 2002) (Missouri Companies Mar. 22 *Ex Parte* Letter); Letter from W.R. England, III, Counsel for Citizen Telephone Company of Missouri, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-92, 96-45, and 95-116, at 2 (filed Oct. 31, 2003) (Citizen Oct. 31 *Ex Parte* Letter). *See also* Letter from Glenn H. Brown, Counsel to Great Plains Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attach. at 8 (filed Sept. 23, 2003) (stating that the local exchange is the incumbent LEC's local service area rather than the MTA). They further argue that calls dialed on a 1+ basis must be routed to the presubscribed IXC under existing equal access rules. *See, e.g.*, Missouri Companies Mar. 22 *Ex Parte* Letter, at 6; Citizen Oct. 31 *Ex Parte* Letter, at 3.

within a single MTA is subject to reciprocal compensation.[393] In the event that we retain the rule and interpret its scope in the more limited fashion advocated by the rural LECs, should the rule be changed so that all intraMTA traffic to or from a CMRS provider is subject to reciprocal compensation? Under such an approach, would LECs be required to route all such intraMTA traffic to CMRS carriers rather than to IXCs, even if dialed on a 1+ basis? We seek comment on the relative merits and drawbacks of such an approach, and ask parties to identify any technical impediments to such routing requirements.

138. For instance, we recognize that the current Commission rules may require that intraMTA calls dialed on a 1+ basis be routed through IXCs. Specifically, section 51.209 of the Commission's rules requires LECs to implement toll dialing parity through a presubscription process that permits a customer to select a carrier to which all designated calls on a customer's line will be routed automatically.[394] Should this rule be changed? We ask parties to explain what technical or network changes would be needed if all intraMTA CMRS traffic were routed to CMRS providers. We also seek comment on whether, in the alternative, all intraMTA calls can be made subject to reciprocal compensation without requiring LECs to alter the routing of their originated traffic. We ask parties supporting a particular approach to address any other Commission rules that may be implicated.

b. Negotiation of Interconnection Agreements

139. As the Commission recognized in the *Intercarrier Compensation NPRM*, CMRS providers typically interconnect indirectly with smaller LECs via a BOC tandem.[395] In this scenario, a CMRS provider delivers the call to a BOC tandem, which in turn delivers the call to the terminating LEC. The indirect nature of the interconnection has enabled CMRS providers to send traffic to rural LECs with which they have no interconnection agreement or other compensation arrangement.[396] Rural carriers in these circumstances have argued that they should not be required to terminate traffic without compensation, and have sought compensation through various means.[397] While many CMRS providers express willingness to enter into compensation agreements, they also assert that the cost of engaging in a negotiation and arbitration process with small incumbent LECs is often prohibitive due to the small

[393] *See* Mid-Missouri Cellular Comments at 4; ALLTEL Reply at 10; Arch Wireless Reply at 7; AT&T Wireless Reply at 27; CTIA Reply at 11; Nextel Reply at 2; PCIA Reply at 12; Sprint Reply at 14; Triton Reply at 7; VoiceStream Reply at 33.

[394] 47 C.F.R. § 51.209(b).

[395] *See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9643, para. 91 n.148. *See also* Nextel Comments at 10-11; Triton PCS Comments at 13; MSTG Reply at 2; *T-Mobile USA, Inc. et al. Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariffs*, CC Docket Nos. 01-92, 95-185, 96-98, Petition of T-Mobile, *et al.* (filed Sept. 6, 2002) (T-Mobile Petition), at 2. Comments and replies filed in response to the T-Mobile Petition will be identified as "T-Mobile Comments" and "T-Mobile Reply."

[396] *See* Alliance of Incumbent Rural Independent Telephone and Independent Alliance Reply at 6-7; MITG Reply at 6; MSTG Reply at 7.

[397] *See, e.g.*, Frontier and Citizens T-Mobile Comments at 7; ICORE T-Mobile Comments at 5, 7; Michigan Rural Incumbent Local Exchange Carriers T-Mobile Comments at 3; Minnesota Independent Coalition T-Mobile Comments at 1-2; NTCA T-Mobile Comments at 2-3; Rural ILECs T-Mobile Comments at 7-8; Rural Iowa Independent Telephone Association T-Mobile Comments at 6. *See also, generally*, T-Mobile Petition.

amount of traffic at issue in each individual negotiation.[398]

140. We seek comment on what measures we might adopt to reduce the costs associated with establishing compensation arrangements. We recognize that a formal negotiation and arbitration process could impose significant burdens on the parties. One possible alternative to the negotiation and arbitration process would be to establish national terms and rates for LEC-CMRS interconnection, perhaps available only where traffic volume between the two carriers is *de minimis*. We seek comment on the merits and drawbacks of this approach, on whether it would provide a better option than the section 252 process, and on how the terms and rates would be determined and applied. Alternatively, we seek comment on whether we can and should authorize states to establish uniform terms or master agreements for interconnection between CMRS providers and small incumbent LECs within the state. We also invite parties to comment on measures or procedures we could adopt to make the negotiation and arbitration process more efficient, such as measures to promote the consolidation of cases.

c. Rating of CMRS Traffic

141. It is standard industry practice for telecommunications carriers to compare the NPA/NXX codes of the calling and called party to determine the proper rating of a call.[399] As a general matter, a call is rated as local if the called number is assigned to a rate center within the local calling area of the originating rate center. If the called number is assigned to a rate center outside the local calling area of the originating rate center, it is rated as a toll call. These local calling areas are established or approved by state commissions.[400]

142. Although rating of calls based on a comparison of the NPA/NXX codes is standard industry practice, it may be possible for an originating LEC to change its switch translations so that a call to an NPA/NXX assigned to a rate center that is local to the originating rate center must be dialed on a 1+ basis and rated as a toll call, rather than a local call. Under such circumstances, a call made to what appears to be a local number would be routed to an IXC and the calling party would be billed for a toll call. A LEC may have the incentive to engage in this practice for a variety of reasons, including increased access revenue, reduced reciprocal compensation payments, and less significant transport

[398] *See, e.g.*, AT&T Wireless T-Mobile Comments at 3; Triton PCS T-Mobile Comments at 6-7. Some small LECs have also asserted that negotiations are not cost-justified for the amount of traffic at issue. *See* Montana LECs T-Mobile Comments at 6; TCA T-Mobile Comments at 2. *But see* Rural ILECs T-Mobile Comments at 7 (asserting that volume of traffic is significant in proportion to the total traffic for small incumbent LECs); Frontier & Citizens T-Mobile Comments at 4 (amount of CMRS-to-rural incumbent LEC traffic is significant and growing).

[399] *See Starpower Communications, LLC v. Verizon South Inc.*, EB-00-MD-19, Memorandum Opinion and Order, 18 FCC Rcd 23625, 23633, para. 17 (2003). One commenter suggests, however, that use of NPA/NXX codes to determine proper rating is not as widespread a practice among rural carriers as it is among the larger LECs. *See* Independent Rural Telephone Companies Alliance/Independent Alliance R&R Comments at 7-8 (describing arrangements to provide other carriers with local calling scopes on a case-by-case basis).

[400] *See Local Competition First Report and Order*, 11 FCC Rcd at 16013-14, para. 1035 (stating that state commissions have the authority to determine what geographic areas are considered "local areas" for purposes of applying reciprocal compensation obligations, consistent with the state commissions' historical practice of defining local service areas). In establishing local calling areas, state commissions consider a number of factors, including community interests and the impact on toll revenues.

obligations. Alternatively, LECs may engage in such practices pursuant to a state requirement.[401]

143. We note that petitions have been filed seeking to clarify a LEC's current obligations with regard to the rating and routing of calls to wireless numbers that are associated with the LEC's rate center.[402] We seek comment on whether we should modify any part of the existing rating obligations of carriers. Are there any rating issues unique to CMRS providers or is this a concern for other types of competitive carriers? We recognize that attempts to address some of the rating issues may raise the question of whether preemption of state commission jurisdiction over the retail rating of intrastate calls and the definition of local calling areas is necessary.[403] Parties supporting preemption should comment on the source of the Commission's authority to preempt and the reasons why preemption of retail rating is warranted in this context. Parties also should comment on whether blanket preemption is necessary or whether such action should be considered on a case-specific basis.

III. PROCEDURAL MATTERS

A. Supplemental Initial Regulatory Flexibility Analysis

144. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[404] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Intercarrier Compensation NPRM.[405] The Commission sought written public comment on reforming the existing intercarrier compensation regime,[406] on alternate approaches to reforming that regime, on whether those alternate approaches will encourage efficient use of and investment in the telecommunications network,[407] on whether they will solve interconnection problems,[408] and on the extent to which they are administratively feasible.[409] The Intercarrier Compensation NPRM also sought comment on the IRFA.[410] The Commission received

[401]For example, on December 22, 2003, ASAP Paging, Inc. (ASAP) filed a petition requesting that the Commission preempt an order of the Public Utility Commission of Texas (Texas Commission) that required toll treatment of calls to ASAP's local numbers, as well as certain provisions of the Texas Public Utility Regulatory Act and certain Texas Commission substantive rules. *See Pleading Cycle Established for Petition of ASAP Paging, Inc. for Preemption of the Public Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Carriers*, WC Docket No. 04-6, Public Notice, 19 FCC Rcd 936 (2004) (ASAP Paging Petition Public Notice).

[402]*See Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 19046 (2002); ASAP Paging Petition Public Notice.

[403]*See* ASAP Paging Petition Public Notice.

[404]*See* 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[405]*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9611 para. 1.

[406]*Id.* at 9658 para. 134.

[407]*Id.* at 9658 para. 135.

[408]*Id.* at 9658 para. 134.

[409]*Id.*

[410]*Id.* at 9657 para. 131.

extensive comment in response to the Intercarrier Compensation NPRM,[411] including several comments addressing the IRFA directly.[412]

145. With this Further Notice, the Commission continues the process of intercarrier compensation reform. The Commission has prepared this present Supplemental Initial Regulatory Flexibility Analysis ("Supplemental IRFA") of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice. This Supplemental IRFA conforms to the RFA.[413] Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments on the Further Notice provided in paragraph 214. To the extent that any statement in this Supplemental IRFA is perceived as creating ambiguity with respect to Commission rules or statements made in sections of this Further Notice that precede this Supplemental IRFA, the rules and statements set forth in those preceding sections are controlling. The Commission will send a copy of this entire Further Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[414] In addition, this Further Notice and the Supplemental IRFA (or summaries thereof) will be published in the Federal Register.[415]

1. Need for, and objectives of, the proposed rules

146. The Commission's goal in this proceeding is to reform the current intercarrier compensation regimes and create a more uniform regime that promotes efficient facilities-based competition in the marketplace.[416] As discussed above, the Commission believes that this goal will be served by creating a technologically and competitively neutral intercarrier compensation regime that is consistent with network developments. It is also critical that this regime be implemented in a manner that will provide regulatory certainty, limit the need for regulatory intervention,[417] and preserve universal service.[418]

147. The current intercarrier compensation system is governed by a complex set of federal and state rules.[419] This system applies different cost methodologies to similar services based on traditional regulatory distinctions that may have no bearing on the cost of providing service, are not tied to economic or technical differences between services,[420] and are increasingly difficult to maintain.[421]

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[411] *See infra* at Appendix A.

[412] *See* NECA Comments at 17; NTCA Comments at 23; and SBA Reply at 12-14.

[413] *See* 5 U.S.C. § 604.

[414] *See id.* § 604.

[415] *Id.*

[416] *See supra* para. 31.

[417] *See supra* para. 33.

[418] *See supra* para. 32.

[419] *See supra* para. 5.

[420] *See supra* para. 15.

These regulatory distinctions provide an opportunity for regulatory arbitrage activities, and distort the telecommunications markets at the expense of healthy competition.[422]

148. The current intercarrier compensation system also does not take into account recent developments in service offerings, including bundled local and long distance services[423], and voice over Internet Protocol (VoIP) services.[424] These developments blur traditional industry and regulatory distinctions among various types of services and service providers, making it increasingly difficult to enforce the existing regulatory regimes.[425] Additionally, the current intercarrier compensation system does not account for recent developments in telecommunications infrastructure. The existing intercarrier compensation regimes are based largely on the recovery of switching costs through per-minute charges.[426] As a result of developments in telecommunications infrastructure, it appears that most network costs, including switching costs, result from connections to the network rather than usage of the network itself.[427] Finally, developments in consumer control over telecommunications services bring into question the assumption that calling parties receive 100 percent of the benefits from a telephone call, a fundamental premise of the current intercarrier compensation regimes.[428]

149. The Commission received several intercarrier compensation reform proposals in response to the NPRM.[429] In this Further Notice, the Commission seeks comment on numerous legal issues it must consider as part of intercarrier compensation reform, whether it adopts one of these proposals or develops a separate approach. Specifically, the Commission seeks comment on whether the cost standards proposed satisfy the requirements of the Act,[430] on the possible exercise of its forbearance authority,[431] and on the appropriate role of state regulation in the intercarrier compensation reform process.[432] The Commission also seeks comment on proposed changes to current interconnection rules.[433]

150. Further, the Commission seeks comment on its obligation to provide cost-recovery

(Continued from previous page)

[421] *See supra* paras. 5, 15.

[422] *See supra* para. 15.

[423] *See supra* para. 19.

[424] *See supra* para. 20.

[425] *See supra* para. 21.

[426] *See supra* para. 23.

[427] *See supra* para. 23.

[428] *See supra* para. 27.

[429] *See* supra note 79.

[430] *See supra* para. 65.

[431] *See supra* paras. 74-77.

[432] *See supra* paras. 78-82.

[433] *See supra* para. 92.

mechanisms,[434] the need, if any, for new cost-recovery mechanisms, the appropriate level of different types of cost recovery mechanisms including end-user charges and universal service,[435] and on the impact of replacing access charges with other types of cost recovery mechanisms.[436] The Commission also seeks comment on the whether price cap and rate-of-return LECs must be treated equally with regard to cost recovery mechanisms, whether such treatment would be competitively neutral,[437] and the appropriate role for state cost recovery mechanisms.[438] Additionally, the Commission seeks comment on how best to transition from the current regime to unified intercarrier compensation regime.[439] Finally, the Commission seeks comment on additional issues stemming from intercarrier compensation reform including transit service obligations,[440] the appropriate treatment of intraMTA CMRS traffic,[441] interconnection agreement negotiation obligations,[442] and routing and rating of CMRS calls.[443]

2. Legal Basis

151. The legal basis for any action that may be taken pursuant to this *Further Notice* is contained in sections 1-5, 7, 10, 201-05, 207-09, 214, 218-20, 225-27, 251-54, 256, 271, 303, 332, 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-55, 157, 160, 201-05, 207-09, 214, 218-20, 225-27, 251-54, 256, 271, 303, 332, 403, 405, 502, and 503 and sections 1.1, 1.421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.421

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply

152. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein.[444] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[445] In addition, the term "small business" has the same meaning as

[434] *See supra* paras. 99-100.

[435] *See supra* paras. 101-02.

[436] *See supra* para. 106.

[437] *See supra* paras. 107-11.

[438] *See supra* paras. 114-15.

[439] *See supra* paras. 116-19.

[440] *See supra* paras. 128-30.

[441] *See supra* paras. 135-38.

[442] *See supra* paras. 139-40.

[443] *See supra* para. 143.

[444] 5 U.S.C. § 604(a)(3).

[445] 5 U.S.C. § 601(6).

the term "small business concern" under the Small Business Act.[446] A "small business concern" is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the Small Business Administration (SBA).[447]

153. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this *Further Notice*. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.[448] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,[449] Paging,[450] and Cellular and Other Wireless Telecommunications.[451] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

154. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[452] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[453] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[454] Thus, under this size standard, the majority of firms can be considered small.

155. *Local Exchange Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such

[446]5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[447]15 U.S.C. § 632.

[448]FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3 (May 2002) (*Trends in Telephone Service*).

[449]13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

[450]*Id.* § 121.201, NAICS code 517211.

[451]*Id.* § 121.201, NAICS code 517212.

[452]13 C.F.R. § 121.201, NAICS code 517110.

[453]U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517110.

[454]*Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

a business is small if it has 1,500 or fewer employees.[455] According to Commission data, 1,310 carriers reported that they were incumbent local exchange service providers.[456] Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees.[457] In addition, according to Commission data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.[458] Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees.[459] In addition, 37 carriers reported that they were "Other Local Exchange Carriers."[460] Of the 37 "Other Local Exchange Carriers," an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees.[461] Consequently, the Commission estimates that most providers of local exchange service, competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

156. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[462] According to Commission data, 281 companies reported that they were interexchange carriers.[463] Of these 281 companies, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees.[464] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

157. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[465] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[466] Of this total, 2,201 firms had employment of 999 or fewer

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[455] 13 C.F.R. § 121.201, NAICS code 517110.

[456] *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Table 5.3 (May 2004) (*Trends in Telephone Service*).

[457] *Id.*

[458] *Id.*

[459] *Id.*

[460] *Id.*

[461] *Id.*

[462] 13 C.F.R. § 121.201, NAICS code 517110.

[463] *Trends in Telephone Service*, Table 5.3.

[464] *Id.*

[465] 13 C.F.R. § 121.201, NAICS code 517110.

[466] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310.

employees, and an additional 24 firms had employment of 1,000 employees or more.[467] Thus, under this size standard, the majority of firms can be considered small.

158. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[468] According to Commission data,[469] 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

159. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[470] According to Commission data,[471] 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.[472] In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees.[473] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

160. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[474] According to Commission

[467] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[468] 13 C.F.R. § 121.201, NAICS code 517110.

[469] *Trends in Telephone Service* at Table 5.3.

[470] 13 C.F.R. § 121.201, NAICS code 517110.

[471] *Trends in Telephone Service* at Table 5.3.

[472] *Id.*

[473] *Id.*

[474] 13 C.F.R. § 121.201, NAICS code 517110.

data,[475] 261 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees.[476] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

161. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[477] According to Commission data,[478] 23 companies reported that they were engaged in the provision of operator services. Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees.[479] Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

162. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[480] According to Commission data,[481] 761 companies reported that they were engaged in the provision of payphone services. Of these 761 companies, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees.[482] Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

163. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[483] According to Commission data,[484] 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees.[485] Consequently,

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[475] *Trends in Telephone Service* at Table 5.3.

[476] *Id.*

[477] 13 C.F.R. § 121.201, NAICS code 517110.

[478] *Trends in Telephone Service* at Table 5.3.

[479] *Id.*

[480] 13 C.F.R. § 121.201, NAICS code 517110.

[481] *Trends in Telephone Service* at Table 5.3.

[482] *Id.*

[483] 13 C.F.R. § 121.201, NAICS code 517310.

[484] *Trends in Telephone Service* at Table 5.3.

[485] *Id.*

the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

164. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[486] According to Commission data,[487] 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

165. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[488] According to Commission data,[489] 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

166. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[490] According to Commission's data,[491] 92 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these 92 companies, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees.[492] Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

167. *Paging.* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees.[493] According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year.[494] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had

[486] 13 CFR § 121.201, NAICS code 513330.

[487] *Trends in Telephone Service at Table 5.3.*

[488] 13 CFR § 121.201, NAICS code 513330.

[489] *Trends in Telephone Service at Table 5.3.*

[490] 13 C.F.R. § 121.201, NAICS code 517110.

[491] *Trends in Telephone Service* at Table 5.3.

[492] *Id.*

[493] 13 C.F.R. § 121.201, NAICS code 513321.

[494] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513321.